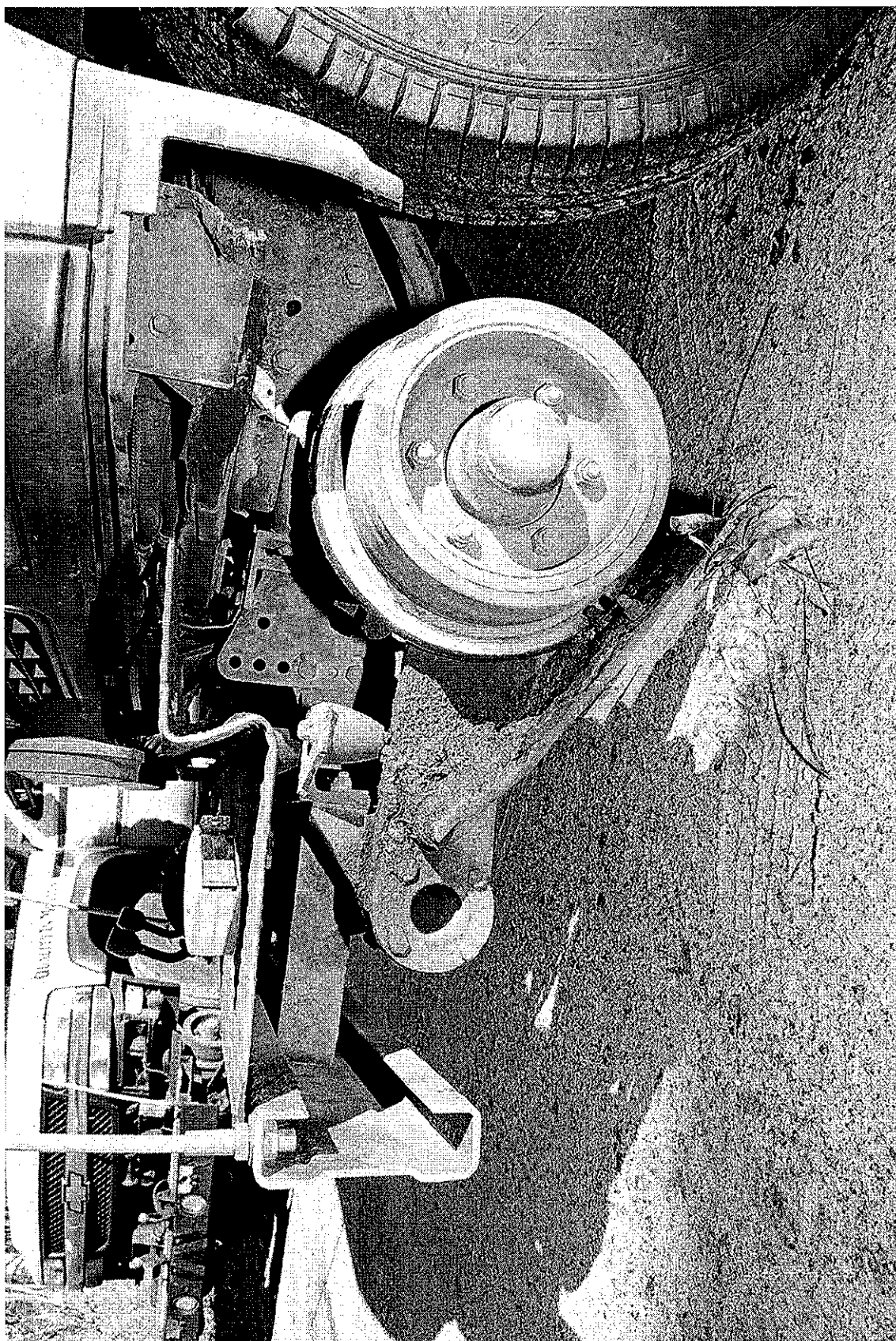


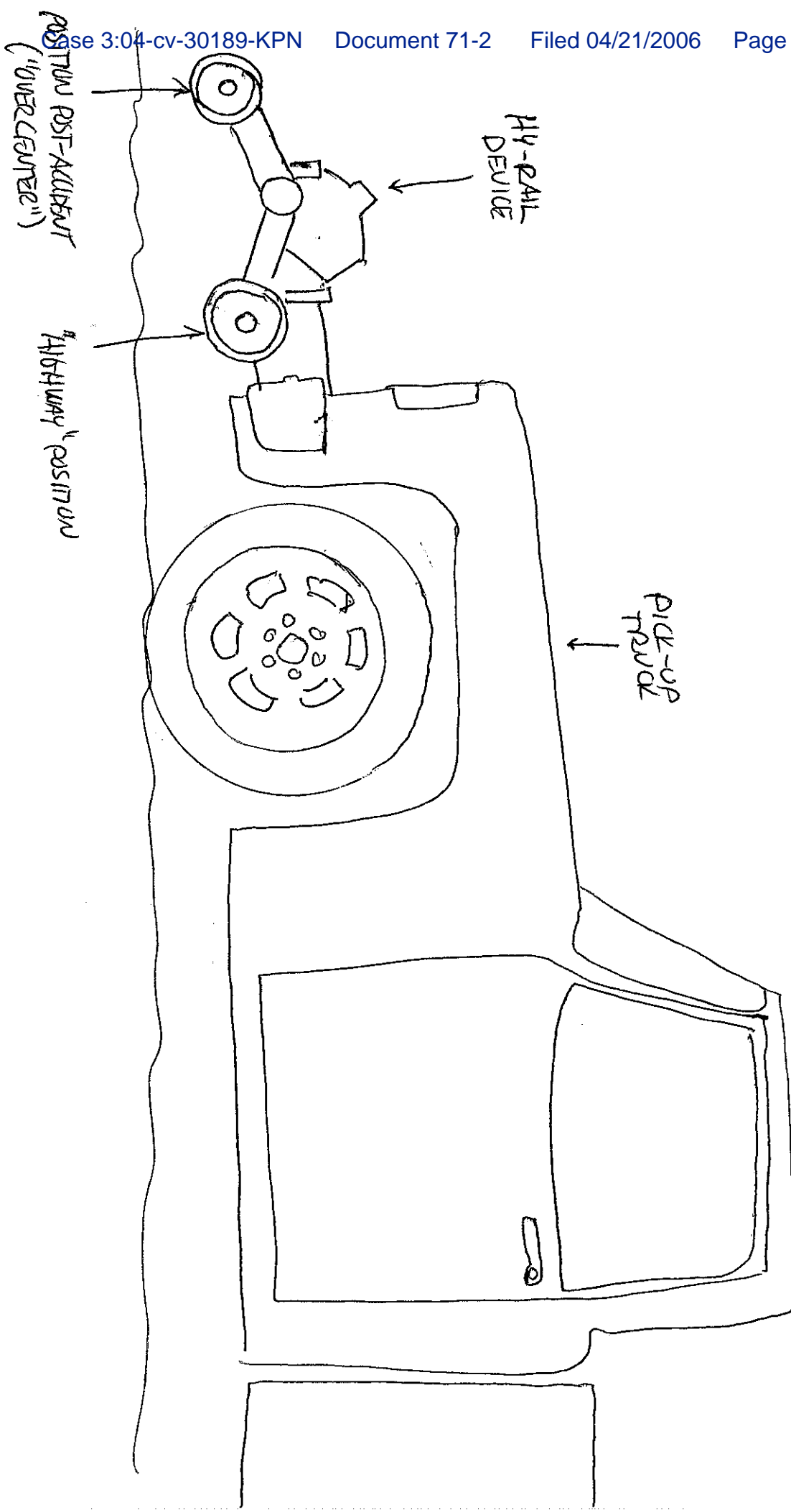
# Exhibit “A”







# Exhibit “B”



# Exhibit “C”

## PERSONAL INJURY/OCCUPATIONAL ILLNESS REPORT

<b>INCIDENT NUMBER</b> RD MO YR Div No Seq 01 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>				<b>TYPE OF INCIDENT</b> 1 PI 2 RE 3 HX 4 HX-PI 5 HX-RE 6 RE-PI 7 HX-RE-PI 02 <input type="text"/>				<b>TYPE OF REPORT</b> 1 FRA Reportable 2 Non-Reportable If FRA Reportable Was Report Changed From Non-Reportable 1 Yes 2 No 03 <input type="text"/>				<b>TRAIN NUMBER</b> 04 <input type="text"/>											
<b>INCIDENT DATE</b> MO DAY YR 05 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>				<b>INCIDENT TIME (24 HOUR CLOCK)</b> 06 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>				<b>MILEPOST</b> 07 <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>				<b>R &amp; L CODE</b> 08 <input type="text"/>				<b>U.S. DOT-AAR GRADE CROSSING NUMBER</b> 09 <input type="text"/>							
<b>STREET ADDRESS / HIGHWAY NAME OR NUMBER (IF PRIVATE CROSSING, SO STATE)</b> 10 <input type="text"/>												<b>NEAREST STATION</b> 11 <input type="text"/>											
<b>INCIDENT CITY</b> 12 <input type="text"/>						<b>INCIDENT COUNTY</b> 13 <input type="text"/>						<b>INCIDENT STATE</b> 14 <input type="text"/>		<b>INCIDENT DAY</b> 1 Mon 5 Fri 2 Tue 6 Sat 3 Wed 7 Sun 4 Thur 15 <input type="text"/>									
<b>WEATHER</b> 1 Clear 4 Fog 2 Cloudy 5 Sleet 3 Rain 6 Snow 16 <input type="text"/>				<b>TEMPERATURE °F</b> 1 Above Zero 2 Below Zero Temp 17 <input type="text"/> <input type="text"/> <input type="text"/>				<b>VISIBILITY</b> 1 Dawn 3 Dusk 2 Daylight 4 Dark 18 <input type="text"/>				<b>ON COMPANY PREMISES</b> 1 Yes 2 No 19 <input type="text"/>				<b>TIMETABLE DIRECTION</b> 1 North 3 East 2 South 4 West 20 <input type="text"/>							
<b>TRAIN SPEED</b> 1 Estimated 2 Recorded 21 <input type="text"/> MPH <input type="text"/>				<b>AUTHORIZED SPEED</b> 1 Permanent 2 Temporary 22 <input type="text"/> MPH <input type="text"/>				<b>AMTRAK/FOREIGN ROAD INVOLVED</b> 1 Amtrak 2 Fgn Road 23 <input type="text"/>				<b>JOINT FACILITY INVOLVED</b> 1 Yes 2 No 24 <input type="text"/>				<b>JOINT OPERATION INVOLVED</b> 1 Yes 2 No 25 <input type="text"/>							
<b>IF FIELD 25 IS YES, ENTER INITIALS AND INCIDENT NUMBER OF OTHER ROAD.</b> 26 Initial <input type="text"/> Number <input type="text"/>												<b>IF FIELD 25 IS YES, ENTER INITIALS AND INCIDENT NUMBER OF ROAD RESPONSIBLE FOR TRACK MAINTENANCE.</b> 27 Initial <input type="text"/> Number <input type="text"/>											
<b>TYPE OF MOVEMENT INVOLVED</b> 1 Freight Train 6 Yard 2 Passenger Train 7 Light Loco(s) 3 Work Train 8 Work Equipment 4 Single Car 9 Movement Not Involved 5 Cut of Cars 28 <input type="text"/>												<b>TYPE OF TRACK USED BY ON-TRACK EQUIPMENT INVOLVED</b> 1 Main 3 Siding 2 Yard 4 Industry IF MAIN TRACK P = Principal B = Branch Typ P/B 29 <input type="text"/>								<b>SUBDIVISION CODE</b> 30 <input type="text"/>			

ID NO. OF INJURED/ILL 31 <span style="border: 1px solid black; padding: 2px;">0788224</span>		NAME OF INJURED/ILL 32 <span style="border: 1px solid black; padding: 2px;">Last Name PAPA DAKI S FI MI PT</span>		AGE 33 <span style="border: 1px solid black; padding: 2px;">53</span>	DATE OF BIRTH 34 <span style="border: 1px solid black; padding: 2px;">Mo 02 Day 04 Yr 4</span>
OCCUPATION 35 <span style="border: 1px solid black; padding: 2px;">I R F O R E</span>		SOCIAL SECURITY NUMBER 36 <span style="border: 1px solid black; padding: 2px;">023384947</span>		DATE HIRED 37 <span style="border: 1px solid black; padding: 2px;">Mo 10 Day 06 Yr 47</span>	
ADDRESS OF INJURED/ILL 39 <span style="border: 1px solid black; padding: 2px;">Street 54 CARMEL LANE City FEEDING HILLSMA St MA Zip Code 01030</span>				INJURED/ILL EMPLOYEE TELEPHONE NUMBER 38 <span style="border: 1px solid black; padding: 2px;">Area ENG</span>	
TYPE OF INJURED/ILL 41 <span style="border: 1px solid black; padding: 2px;">A</span> A Employee On Duty B Employee Off Duty C Passenger D Non Trespasser - On RR Property E Trespasser F Worker On Duty - Contractor G Contractor - Other H Worker On Duty - Volunteer I Volunteer - Other J Non Trespasser - Off RR Property				NATURE OF INJURY 42 <span style="border: 1px solid black; padding: 2px;">20</span> 10 Bruise/Contusion 20 Sprain/Strain 30 Cut/Laceration/Abrasion 35 Puncture Wound 40 Electrical Shock/Burns 50 Other Burns 60 Dislocation 70 Fracture 75 Dental Related Injuries 80 Amputation 90 Fatally Injured 91 Foreign Object in Eye 92 Hernia 93 Concussion 94 Nervous Shock 95 Internal Injury 96 Loss of Eye 97 Reaction From One-Time External Exposure to Chemicals 98 One-Time Exposure to Loud Noise (Explosion) 99 Other 9A One-Time Exposure to Fumes (Does not exceed a single duty tour/without long term or permanent consequences)	
NATURE OF ILLNESS 43 <span style="border: 1px solid black; padding: 2px;">11k</span> • Occupational Skin Diseases or Disorders • Dust Diseases of The Lungs (Pneumoconiosis) • Respiratory Conditions Due to Toxic Agents • Poisoning (System Effects of Toxic Materials) • Disorders Due to Physical Agents (Other Than Toxic Materials) • Disorders Due to Repeated Trauma • All Other Occupational Illness of Employees (See FRA Guide, Appendix E, for specific code)					
BODY PART AND SIDE INJURED 44 <span style="border: 1px solid black; padding: 2px;">6C</span> 1A Upper Arm 1B Elbow 1C Lower Arm 1D Wrist 1E Hand 1F Thumb/Fingers 3A Upper Leg 3B Knee 3C Lower Leg 3D Ankle 3E Heel 3F Toes 3G Foot 5A Eye 5B Ear 5C Nose 5D Mouth/Teeth 5E Skull/Scalp 5F Neck/Throat 6A Spine/Spinal Cord 6B Upper Back (muscular) 6C Lower Back (muscular) 6D Shoulder 6E Collar Bone 6F Ribs/Sternum 6G Internal Injuries 6H External Injuries- Other 6I Hips/Buttocks 6J Genitalia 8 Injuries to various body parts of relatively equal severity 9 Other Body Parts 1 Right Side 2 Left Side 3 Both		NUMBER CONSECUTIVE DAYS WORKED 45a <span style="border: 1px solid black; padding: 2px;">B</span> HOURS OFF PRIOR TO TOUR OF DUTY 45b <span style="border: 1px solid black; padding: 2px;">2</span> <span style="border: 1px solid black; padding: 2px;">116</span>		DATE & TIME SHIFT BEGAN (24 HOUR CLOCK) DATE <span style="border: 1px solid black; padding: 2px;">Mo 06 Day 13 Yr 01</span> TIME <span style="border: 1px solid black; padding: 2px;">0700</span>	
FIRST DAY OFF DUE TO INJURY/ILLNESS 48 <span style="border: 1px solid black; padding: 2px;">Mo 06 Day 15 Yr 01</span>		FIRST DAY OF SERVICE AFTER INJURY/ILLNESS 49 <span style="border: 1px solid black; padding: 2px;">Mo Day Yr</span>		DAYS AWAY FROM WORK DUE TO INJURY/ILLNESS 50 <span style="border: 1px solid black; padding: 2px;">Actual Estimated</span>	
DAYS OF RESTRICTED ACTIVITY 51 <span style="border: 1px solid black; padding: 2px;">1</span> 1 Yes 2 No Number of days injured or ill was assigned a temporary job, worked less than full time a permanent job, or was unable to perform of his or her normally assigned duties.		OBJECT/SUBSTANCE CAUSING INJURY/ILLNESS 54 <span style="border: 1px solid black; padding: 2px;">STCC Number</span>			
WAS INJURED/ILL TERMINATED OF PERMANENTLY TRANSFERRED? 52 <span style="border: 1px solid black; padding: 2px;">1 Yes 2 No</span> (Position)		IF FATAL DATE OF DEATH 53 <span style="border: 1px solid black; padding: 2px;">Mo Day Yr</span>			
PERSONAL PROTECTIVE EQUIPMENT WORN OR USED 55 <span style="border: 1px solid black; padding: 2px;">A None B Safety Shoes C Safety Hat (Hard Hat) D Safety Glasses E Safety Goggles F Face Shield G Rubber Gloves H Other Type Gloves I Hearing Protection J Respirator K Leg/Shin Guards L Back Support Belt M Tag Lines N Safety Harness O Other</span>		EQUIPMENT CONSIST 56 <span style="border: 1px solid black; padding: 2px;">Locos Cars Empty Cab No.</span>			



## CIRCUMSTANCE CODES

(See FRA Guide, Appendix F, for specific codes)

Physical Act

Location

Event

Result

Cause

57

710

A60A1

38

25

09

WAS AN EXPOSURE TO HAZARDOUS MATERIAL THE CAUSE OR CONTRIBUTING FACTOR TO THE CONDITION BEING REPORTED?

1 Yes ☐  
2 No ☒

## TOXICOLOGICAL TESTING

Test Conducted 1 Yes ☐  
2 No ☒

Test Results ☐ ☐ ☐

60

## TOX TESTING

If Field 60 is Yes Answer The Following:

(a) Was Employee On Duty When Tested?

1 Yes  
2 No

(b) Reason For Testing

1 FRA Req'd  
2 Agreement

(c) Urine Sample

1 Yes  
2 No

(d) Blood Sample

1 Yes  
2 No

(e) Employee Off-Duty, Will Be Tested Upon Return. If Yes, Explain Why in Remarks.

1 Yes  
2 No

60a

## NAME AND ADDRESS OF TESTING FACILITY

Name

Street

City

St

Zip Code

## TESTING OFFICER

Last Name  F M

Time Employee Arrived At Testing Facility

Time Sample(s) Taken

How Were Urine/Blood Samples Shipped?

60b

## SPECIAL INFORMATION FIELD

Injury resulted from lifting or rigging? 1 Yes 2 No ☒

If yes, Rigging equipment?

1 Yes 2 No ☐

Manually lifting? 1 Yes 2 No ☐

Estimated weight:  lbs.

61

## PHYSICIAN NAME AND ADDRESS

Name  F M

Street

City  St  Zip Code

62

## HOSPITAL NAME AND ADDRESS

Name

Street

City  St  Zip Code

63

## IF FIELD 61 CHECKED, COMPLETE THE FOLLOWING:

Exceeded hoist/equipment capacity?

1 Yes 2 No ☐

Employee had Lifting/Rigging Training?

1 Yes 2 No ☐

Supervisor had Lifting/Rigging Training?

1 Yes 2 No ☐

61a

## REMARKS: EMPLOYEE/OTHER INJURED PERSON'S ACCOUNT OF ACCIDENT/INCIDENT (Indicate Source(s) of information)

GEAR ASSEMBLY BROKE. TO RAISE WHEEL I HAD TO USE A LIVING BAR AS A LEVER. THEN BLOCK WHEEL WITH 4" WOOD BLOCK AT SAME TIME. WHEN I REACHED DOWN WITH BLOCK I FELT SOMETHING SNAP IN MY LOWER BACK (R. PAPADAKIS)

64

HEAT PATROL

## 66. DESCRIBE FACTORS ASSOCIATED WITH CASE: (e.g. employee reports he slipped on ballast)

LEFT FRONT RAIL GEAR WENT OVER CENTER

## 67 DESCRIBE THE INJURY/CONDITION THAT PERSON SUSTAINED: (e.g. employee complains of pain in his back)

EMPLOYEE COMPLAINS OF PAIN IN LOWER LEFT BACK

## 68 LIST PROCEDURES, MEDICATION, THERAPY, USED FOR TREATMENT OF CONDITION:

X-RAY, ANAPROX, VALIUM, PERICET

## 69 CHECK ANY OF THE CONSEQUENCES RESULTING FROM THIS INJURY/CONDITION:

- ☐ Occupational Illness
- ☒ Instructions to Obtain, or Receipt of Prescription Medication
- ☒ Medical Treatment Beyond First Aid (X-RAY)
- ☐ Hospitalization as Inpatient
- ☐ Multiple Treatments or Therapy
- ☐ Loss of Consciousness

## 70 IF ANY OF THE ABOVE CONSEQUENCES OR RESTRICTED/LOST WORK DAYS OCCURRED, THE INJURY/ILLNESS IS ALMOST ALWAYS REPORTABLE. IF YOU BELIEVE THIS CASE DOES NOT MEET THE REPORTING CRITERIA, GIVE A BRIEF EXPLANATION.

## NAME AND TITLE OF REPORT PREPARER

Name

FI MI

Phone #

Title

ROSIS

RG

413-785-4351

ROADMASTER

## REPORT DATE

MO DAY YR

06/15/01

## TIME AND DATE INCIDENT WAS REPORTED BY THE INJURED EMPLOYEE AND NAME OF SUPERVISOR NOTIFIED

MO DAY YR

FI MI

Time

0630

Date

06/15/01

Name

ROSIS

RG

Was Employee On Duty When  
The Incident Was Reported?1 Yes  
2 No

1

## NAMES AND ADDRESSES OF WITNESSES

Last Name		FI	MI	Street	City	State
1st	NONE					
2nd						
3rd						
30a 4th						

## INSTRUCTIONS FOR FIELD PREPARATION OF FORM PI-1 RRM PERSONAL INJURY/OCCUPATIONAL ILLNESS REPORT

## FIELD NO.

## FIELD NO.

- 01 Leave blank
- 02 Enter code to indicate type of occurrence. For personal injury or occupational illness not resulting from rail equipment or rail-highway grade accident/incident, enter "1". If personal injury resulted from rail-highway grade crossing collision, enter "4". If personal injury resulted from rail equipment accident/incident, enter "6". If personal injury resulted from rail-highway grade crossing collision with rail equipment and track damage, enter "7". Codes 2, 3 and 5 will not be entered on personal injury/occupational illness reports.
- 03 Enter code to indicate FRA reportability; if coded 1, enter code to indicate if changed from non-reportable.
- 04 When Applicable, enter train/yard job number. This field can be blank only when field 28 is coded "9" to indicate movement not involved.
- 05 Enter date of occurrence resulting in injury/illness. This field cannot be blank.
- 06 Enter time of occurrence. 24-hour clock or "military time" will be entered. This field cannot be blank.
- 07 Enter milepost location to the nearest tenth of a mile. If the milepost designation contains both alpha and numeric characters, they must be shown. This field cannot be blank.
- 08 Leave blank.
- 09 If personal injury resulted from rail-highway grade crossing collision, enter DOT-AAR Grade Crossing Number, otherwise leave blank.
- 10, 12, 13, 14 Enter address, city, county and state at which the injury/illness occurred. These fields cannot be blank.
- 11 Enter nearest station as shown in the timetable. This field cannot be blank.
- 15 Enter code to indicate day of the occurrence. Enter one of the codes shown.
- 16 Enter code to indicate weather conditions at the time of occurrence. Enter one of the codes shown.
- 17 Enter temperature and code to indicate above or below zero. This field cannot be blank.
- 18 Enter code to indicate visibility at time of occurrence. Enter one of the codes shown.
- 19 Enter applicable code.
- 20 When applicable, enter code to indicate direction of movement. This field will be blank when field 28 is coded "9".
- 21 When applicable, enter speed of movement and code to indicate if recorded or estimated. This field will be zero when movement is stopped and will be blank when field 28 is coded "9".
- 22 When applicable, enter authorized speed at the location and code to indicate if speed limit is permanent or temporary. This field will be blank when field 28 is coded "9".
- 23 Enter code to indicate Amtrak/Foreign Road Involvement Code 1 or 2, if Amtrak/Foreign Road not involved, leave blank.
- 24 Leave blank.
- 25 Enter code to indicate if joint operation is involved. Must code "1" or "2".
- 26, 27 Leave blank.
- 28 Enter code to indicate type of movement involved. Enter one of the codes shown.
- 29 Enter code to indicate type of track on which the on-track equipment was operating in space "TYP". If coded 1, enter "P" or "B" to indicate principal or branch main track. This field can be blank when field 28 is coded "9".
- 30 Enter subdivision code. This field cannot be blank.
- 31 Enter ID number of injured/ill employee. If ID number does not fill all spaces, enter zero(s) to fill left spaces. For non-employees, enter zero in each of the first six spaces and "1" in the seventh space; for multiple injuries, the second will have "2" in the last space, third injured 3, etc. This field cannot be blank.
- 32 Enter name of injured/ill person. This field cannot be blank.
- 33 Enter age of injured/ill person. This field cannot be blank.
- 34 Enter injured/ill person's date of birth. This field may be blank for non-employee.
- 35 Enter occupation of injured/ill employee. This field may be blank for non-employee.
- 36 Enter Social Security Number of injured/ill employee. This field may be blank for non-employee.
- 37 Enter years of service for injured/ill employee. This field may be blank for non-employee.
- 38 Enter department code. This field cannot be blank.
- 39 Enter address of injured person. Indicate Street Address, City, State and Zip Code. This field cannot be left blank for employee, it may be blank for non-employee if address is not known.
- 39a Enter telephone number, including area code, of injured/ill employee. This field cannot be blank for employee; it will be blank for non-employee.
- 40 Enter name of injured/ill employee's supervisor. This field cannot be blank for employee; leave blank for non-employees.
- 41 Enter code to indicate the type of injured/ill person. Must enter one of the codes shown.

- 42 Enter code to indicate nature of injury. Must enter one of the codes shown for an injury; if the report covers employee occupational illness, enter zero and code field 43. If this field is coded 90, enter date of death in field 53.
- 43 Enter code to indicate nature of employee occupational illness; if report covers injury, enter zero and code and code field 42.
- 44 Enter codes to indicate body part and side of body injured. Must enter one of the body part codes shown. If side of body is not applicable, enter "0" in the side of body space. If field 42 was coded other than zero, this field must have entries. Leave this field blank for employee occupational illnesses.
- 45a Enter number of consecutive days worked.
- 45b Enter number of hours off prior to tour of duty.
- 46a Enter date & time shift began. 24-hour clock or military time will be entered.
- 47 If injury meets any of the criteria shown, enter "1" in the space provided. prescription medication is the only FRA reportable criteria met, enter 1 in left space and "P" in P/R space. If restriction of work or motion on the day of injury only is the lone FRA reportable criteria met, enter "1" in the left space and "R" in the P/R space. If none of the criteria shown are met, enter 2 in the left space and leave P/R space blank.
- 48 If injury/illness results in days away from work, enter date of first day off after the day of occurrence. For injury/illness with no days away from work, enter zeros.
- 49 If injury/illness resulted in days away from work, enter date employee returned to duty. For injury/illness with no days away from work, enter zeros. If employee remains away from work at the end of the reporting period, enter zeros and estimate of days away from work in field 50.
- 50 Enter the number of days away from work due to injury/illness. If the actual number of days is known, enter in "Actual" spaces and zeros in "Estimated" spaces; fields 48 and 49 will show dates of disability. If the employee remains away from work at the end of the reporting period, estimate the days and enter in "Estimated" spaces and zeros in "Actual" spaces; field 48 will show date of first day away and field 49 will be zeros.
- 51 Enter the number of restricted activity days resulting from the employee injury/illness. If the actual number of days is known, enter in "Actual" space and enter zeros in "Estimated" space. If the employee remains on restricted work assignment at the end of the reporting period, enter an estimate of days in "Estimated" space and enter zeros in the "Actual" space.
- 52 Enter code to indicate if employee was terminated or permanently transferred due to injury/illness; enter 1 or 2 if transferred, show position to which transferred in the space provided.
- 53 If field 42 is coded 90, enter date of death. Leave blank when field 42 is coded other than 90. If occupational illness, field 43 coded other than zeros, resulted in death, enter date of death, otherwise leave blank.
- 54 Enter name of object or substance that caused injury/illness. If the substance is hazardous material, enter STCC number in space provided.
- 55 Enter code(s) to indicate personal protective equipment worn or used by injured/ill employee; enter applicable codes alphabetically. This field can be blank for non-employees.
- 56 Enter the number of units of equipment in the consist when field 28 is coded other than "9". The first position of "Caboose" space is for the number of consist; in the second position enter "L" if caboose is occupied by operating crew or "E" if not occupied. If no caboose on train, enter zero in first position and leave second position blank. If field 28 is coded "9", leave blank.
- 57 Enter applicable circumstance codes.
- 57a Enter applicable code.
- 60 Enter code to indicate if Toxicological Test was conducted. If test results are not known when report is filed, leave results space blank.
- 60a If field 60 is coded 1, make appropriate entries in items (a) thru (e). This field can be blank only when field 60 is coded 2.
- 60b If field 60 is coded 1, provide information requested; each block must have an entry. This field can be blank only when field 60 is coded 2.
- 61 If applicable, enter information.
- 61a If applicable, enter information.
- 62 Enter name and address of attending physician. If none, leave blank. This field may be blank for non-employee.
- 63 Enter name and address of hospital or medical facility when applicable.
- 65, 66, 67, 68 Enter requested information.
- 69 Check, if applicable.
- 70 Complete, if required.

## REMARKS

Enter injured/ill person's account of the occurrence that resulted in injury/illness. Enter time and date the incident was reported by the injured employee; enter code to indicate if employee was on duty when the incident was reported. This field cannot be blank for employee injury; this field will be blank for employee occupational illness report and non-employee injury.

# Exhibit “D”



VOLUME I  
PAGES 1-223  
EXHIBITS 1-13

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-30189-MAP

\*\*\*\*\*  
PAUL T. PAPADAKIS, \*  
PLAINTIFF, \*  
-VS- \*  
CSX TRANSPORTATION, INC., \*  
DEFENDANT. \*  
\*\*\*\*\*

Deposition of ERNEST GAILOR, taken on behalf  
of the Defendant, pursuant to Notice under the  
Massachusetts Rules of Civil Procedure, before  
Daryll Palma Watts, a Professional Court Reporter  
and Notary Public, in and for the Commonwealth of  
Massachusetts, at the offices of FLYNN &  
ASSOCIATES, P.C., 400 Crown Colony Drive, Quincy,  
Massachusetts, on Tuesday, October 11, 2005,  
commencing at 10:46 a.m.

BEACON HILL COURT REPORTING, INC.  
44 BAYSWATER STREET  
BOSTON, MASSACHUSETTS 02128  
617-569-8050

BEACON HILL COURT REPORTING, INC.  
617-569-8050

I N D E X

Witness Direct Cross Redirect

ERNEST GAILOR

By Mr. Flynn 4

E X H I B I T S

Id.	Description	Page
1	Curriculum Vitae	8
2	Folder	65
3	Folder	67
4	Correspondence dated February 09, 2004	71
5	Correspondence dated June 18, 2004	74
6	Correspondence dated May 27, 2004	80
7	Correspondence dated June 18, 2004	82
8	EBT List	84
9	Memorandum dated June 21, 2005	178
10	Mr. Sanderson's Report	184
11	Report dated August 24, 2005	184
12	Report dated August 24, 2005	185
13	Report dated August 24, 2005	186

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APPEARANCES:

MICHAEL B. FLYNN, ESQUIRE  
VALERIE A. MURPHY, ESQUIRE  
FLYNN & ASSOCIATES, P.C.  
400 Crown Colony Drive - Suite 200  
Quincy, Massachusetts 02169  
Counsel for: The Defendant.

ROBERT M. BYRNE, JR., ESQUIRE  
THORNTON & NAUMES, LLP  
100 Summer Street  
Boston, Massachusetts 02110  
Counsel for: The Plaintiff.

ALSO PRESENT:  
Mr. Gary Baker

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P R O C E E D I N G S

\* \* \*

MR. FLYNN: The usual stipulations;  
objections, except as to form, and motions to  
strike reserved until the time of trial.

MR. BYRNE: Agreed.

MR. FLYNN: He'll read and sign?

MR. BYRNE: Agreed.

MR. FLYNN: Waive the notary.

MR. BYRNE: Agreed.

DEPONENT, ERNEST GAYLOR, having  
produced satisfactory identification by means of  
a New York Driver's License, being sworn, deposes  
and states as follows:

EXAMINATION BY MR. FLYNN:

Q Sir, would you please state your name for the  
record?

A Ernest J. Gailor.

Q What's your current residential address?

A 4000 Silver Beach Road, Malta Ridge, New York.

Q What do you do for a living?

A I'm an engineer.

Q What kind of an engineer?

A Civil, environmental, structural.

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1 Q Mr. Papadakis testified that it did not, you know  
2 that, don't you?  
3 A I know that. But your maintenance guy says it  
went over center.  
Q Wait, wait, wait. Let's talk about --  
6 MR. BYRNE: Objection.  
7 Q Let's talk about Mr. Papadakis.  
8 MR. BYRNE: Objection. You should let the  
9 witness complete his answer.  
10 Q You did, didn't you?  
11 A Well I was discussing now the maintenance people  
12 had said that it overcammed or over-centered and  
13 that they had to bring it back around and then it  
14 worked properly. And then you had a memo issued  
15 identifying that this is what had happened to the  
16 device and that it had been repaired. And then  
17 there was a subsequent suggestion as to what they  
18 should do to make sure this doesn't happen again.  
19 Q What happened to Mr. Papadakis --  
20 MR. BYRNE: Is your answer complete?  
21 THE WITNESS: Yes. I'm sorry.  
22 Q What happened to Mr. Papadakis was unwitnessed,  
23 correct?  
24 A Correct.

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1 Q So he's the only one who actually saw what  
2 happened to him, correct?  
3 A Correct.  
4 Q The memo came from a fellow named Mr. Evers,  
5 correct?  
6 A Correct.  
7 Q He's out in Selkirk, right?  
8 A Correct.  
9 Q He never saw what happened, did he?  
10 A Only was told, that's correct.  
11 Q You've reviewed his deposition, correct?  
12 A Correct.  
13 Q You know that it's based on what other people  
14 told him, correct?  
15 A Correct.  
16 Q But not including the plaintiff, correct?  
17 A Correct.  
18 Q In other words, it's secondhand hearsay as we  
19 like to call it, correct?  
20 MR. BYRNE: Objection.  
21 Q In other words, somebody, Mr. Papadakis told  
somebody something and that somebody then told  
23 Mr. Evers what happened and then he wrote his  
24 memo; is that your understanding of how it

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1 occurred?  
2 MR. BYRNE: Objection.  
3 A My understanding is is that the maintenance  
4 people found what happened, repaired it and then  
5 passed that information along.  
6 Q The maintenance people being Mr. Ebert?  
7 A Correct.  
8 Q At TNT?  
9 A Yes, TNT.  
10 Q By the time it got out to TNT what we know is  
11 that the wheel was over-centered?  
12 A Correct.  
13 Q In other words, the pilot arm and the wheel were  
14 pointing out toward the front of the vehicle, not  
15 away from the vehicle as opposed to its normal  
16 position which would be back into the vehicle?  
17 A By on center, correct.  
18 Q You understand from reviewing Mr. Papadakis'  
19 deposition that it's his testimony that that's  
20 not what occurred at all, correct?  
21 A I understand. That's correct.  
22 Q Mr. Papadakis' testimony was that the wheel never  
23 went over center, correct?  
24 A Correct.

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1 Q And that the only thing that he had a problem  
2 with was getting it back up into the highway  
3 position, correct?  
4 A Correct.  
5 Q In your opinion -- to form the basis of your  
6 opinions, which we'll get to a little bit later,  
7 but to get to your opinions do you completely  
8 disregard what Mr. Papadakis says?  
9 A There are portions of his testimony that I do  
10 disregard.  
11 Q That portion being what he says happened to the  
12 device itself, correct?  
13 A Correct.  
14 Q You have to completely disregard that to get to  
15 your opinion, correct?  
16 A Correct.  
17 Q Because if you believe what he said there's no  
18 evidence of any defect, correct?  
19 MR. BYRNE: Objection.  
20 A If I believe what he said there was a defect, but  
21 I was unable to determine what it was.  
22 Q Something happened when he tried to put it back  
23 up, but you have no way of explaining it,  
24 correct?

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1 MR. BYRNE: Objection.  
 2 A Short of a material failure.  
 3 Q There's no evidence of a material failure?  
 A I have no evidence of a material failure.  
 Q But the evidence is that since -- it was working  
 6 properly once Mr. Ebert brought it back into the  
 7 proper position and the evidence is actually to  
 8 the contrary; that, in fact, there was no  
 9 material there, correct?  
 10 A Correct.  
 11 Q Then the vehicle was put in service and is still  
 12 in service today without a recurrence of any  
 13 material failure, correct?  
 14 MR. BYRNE: Objection.  
 15 A I don't know that.  
 16 Q Well you have been given subsequent maintenance  
 17 and repair records, correct?  
 18 A Up until a date, up until the date that I have  
 19 information, yes.  
 20 Q About six months ago, a year ago?  
 21 A I know of nothing other than up to that date.  
 22 Q So the vehicle continued -- so let's just review  
 23 it. Ebert inspects it and once he gets it back  
 24 to the proper position it works properly, right?  
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1 A That's my understanding.  
 2 Q So that's evidence that there was no material  
 3 defect, correct?  
 4 A Correct.  
 5 Q Based on the repair records that you have to date  
 6 or to the point that you got them the vehicle was  
 7 in service for several years afterwards without  
 8 any recurrence of this problem, correct?  
 9 A Up to the limit of the records, correct.  
 10 Q That's evidence again that there was no material  
 11 defect at that time or since, correct?  
 12 A Correct.  
 13 Q To get to your opinion you have to disregard how  
 14 Mr. Papadakis described the incident as having  
 15 happened, correct?  
 16 MR. BYRNE: Objection.  
 17 A His descriptions of how he dropped the gear and  
 18 then how he tried to raise the gear I believe are  
 19 accurate. His descriptions of how he was hurt  
 20 are probably accurate. His descriptions of what  
 21 he thinks happened to the gear I don't think are  
 accurate.  
 23 Q That's because you cannot explain how they would  
 24 have or could have occurred to any degree of

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1 reasonable certainty, correct?  
 2 A That's true.  
 3 Q So then to come to your opinion which you have  
 4 based on a reasonable degree of certainty you  
 5 start with the assumption that the wheel had  
 6 overcammed, correct?  
 7 A I don't think I started with that assumption.  
 8 Initially I was looking for some kind of  
 9 mechanical error, some material defect, a broken  
 10 shaft, a broken key, any of those items. But I  
 11 didn't see evidence or there was no evidence  
 12 presented to me that indicated any of that was  
 13 there. From there we stepped into the  
 14 overcamming.  
 15 Q So your first instinct in this case based on your  
 16 professional experience was something must have  
 17 been wrong with the device in terms of its  
 18 materials, correct?  
 19 A Correct.  
 20 Q Did you express that opinion to anybody?  
 21 A Oh, yes.  
 22 Q Did you tell plaintiff's counsel that?  
 23 A I believe we talked about it.  
 24 Q Were you persuaded otherwise?

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1 A Well I went out and did my inspection. Looked at  
 2 the equipment. Looked at the maintenance  
 3 records. I really was looking for a materials  
 4 list as to what was used to fix this thing, and  
 5 there was none. At that time I had to step back  
 6 and go a different direction with it.  
 7 Q So even up to the point of the inspection you  
 8 were still thinking there's got to be a material  
 9 defect?  
 10 A Correct.  
 11 Q You weren't thinking of overcamming?  
 12 A I wasn't.  
 13 Q Or how the device could come to overcam?  
 14 A Well I knew it could. I just didn't -- from what  
 15 I understood of the accident I didn't believe  
 16 that overcamming had been the cause.  
 17 Q When you did your inspection you found no  
 18 evidence of any material defect, right?  
 19 A Correct.  
 20 Q Was it at that point that you started to drop  
 21 that opinion from the list of possibilities?  
 22 A I believe -- I don't know if we got maintenance  
 23 records after that. I know we got some  
 24 maintenance records well after that. But I don't

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1 inspection?  
 2 A No.  
 3 Q You also relied on -- you took some photographs,  
 4 right?  
 5 A Correct.  
 6 Q Is there anything significant about these  
 7 photographs which you would like to point out to  
 8 me that form the basis of your opinions?  
 9 A No. The photographs identified are photographs  
 10 of a properly operating piece of equipment. It  
 11 was the truck that he used the day that he was  
 12 injured. Took pictures of the labels and the  
 13 identification number on the gear just so we were  
 14 all working from the same page.  
 15 Q You've also reviewed -- so these photographs  
 16 don't show anything wrong with the device,  
 17 correct?  
 18 MR. BYRNE: Objection.  
 19 Q They don't show anything defective, correct?  
 20 A I could not find any defects when I took the  
 21 photographs.  
 22 Q They don't show anything out of adjustment,  
 23 correct?  
 24 A Correct.

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1 Q They don't show what you believe occurred to Mr.  
 2 Papadakis in these photographs, correct?  
 3 A Oh, no, we have no pictures of the overcamming,  
 4 no.  
 5 Q Have you ever -- do you have any information from  
 6 any source other than the Harsco Web site web  
 7 site about overcamming of the wheel?  
 8 A Yes.  
 9 Q What source is that?  
 10 A Richard Sanderson.  
 11 Q Other than Mr. Sanderson do you have any  
 12 evidence, any evidence of overcamming with  
 13 respect to this Hy-Rail device?  
 14 A No.  
 15 MR. BYRNE: Objection.  
 16 Q Who is Mr. Richard Sanderson?  
 17 A He's a retired railroad worker.  
 18 Q Have you ever met him?  
 19 A Only have spoken with him over the phone.  
 20 Q Once?  
 21 A A couple of times.  
 22 Q More than twice?  
 23 A Possibly three. Certainly no more than three.  
 24 Q Two to three times?

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1 A Correct.  
 2 Q How long were these conversations with him?  
 3 A The first one was probably ten minutes. The  
 4 second one was at least half an hour. If there  
 5 was a third one then it was another fifteen  
 6 minutes.  
 7 Q So less than an hour total?  
 8 A Correct.  
 9 Q You were put in touch with Mr. Sanderson by  
 10 plaintiff's counsel, correct?  
 11 A Correct.  
 12 Q This isn't somebody you sought out, correct?  
 13 A Correct.  
 14 Q Why was it that plaintiff's counsel put you in  
 15 touch with Mr. Sanderson?  
 16 A He felt he was a very knowledgeable individual.  
 17 Q Were you put in touch with Mr. Sanderson because  
 18 you were having problems coming to an opinion in  
 19 this case?  
 20 A We were working --  
 21 MR. BYRNE: Objection.  
 22 Q First of all, just yes or no, and then you can  
 23 explain it for me.  
 24 A Oh, I was having no problem coming to opinions.

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1 Q Even though your first hypothesis was not proven?  
 2 A That was -- that's true.  
 3 Q Are you put in touch with Mr. Sanderson after  
 4 your first hypothesis is put aside?  
 5 A It's probably about the same time that we were  
 6 trying to come to, I was trying to come to  
 7 conclusions.  
 8 Q You were just saying we were trying to come to  
 9 conclusions?  
 10 A I always say we. I've got a mouse in my pocket.  
 11 Q Did you mean you and plaintiff's counsel?  
 12 A No, no, no, no.  
 13 Q So you're trying to come to this conclusion.  
 14 Your first hypothesis you put aside.  
 15 Are you searching at that point in time for  
 16 a second hypothesis?  
 17 A Well I've got a conflict of information. I've  
 18 got, I've got EBT's that are, have conflicting  
 19 information.  
 20 Q So you're having a problem coming to a  
 21 conclusion?  
 22 A I am.  
 23 Q At that point in time you don't have any opinion;  
 24 is that fair to say?

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1 Q You go and look at perhaps articles that are  
2 written about how bleachers are put together,  
3 correct?  
4 A I would.  
5 Q And you'd look at articles as to the different  
6 formulas and things for the structural analysis  
7 of bleachers, correct?  
8 A Correct.  
9 Q You go to those resources so that you can learn  
10 those things, correct?  
11 A Learn them, learn them in the same way that you  
12 would drive a car. You don't learn to drive a  
13 car every time you get into it. That's what  
14 you're saying.  
15 Q Right.  
16 A I don't learn. The resources are there to use.  
17 Q Certainly Mr. Sanderson was a resource that you  
18 felt that you wanted to take advantage of, right?  
19 A I would, yes.  
20 Q You didn't know about this gentleman until  
21 plaintiff's counsel put you in touch with him,  
22 correct?  
23 A Correct.  
24 Q Do you know what the relationship is between

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1 A I don't recall.  
2 Q It was before you did your report, wasn't it?  
3 A I believe it was probably after we were done, or  
4 close to being done.  
5 Q Sir, was it before or after you did your report?  
6 A During.  
7 Q During?  
8 A Could very well be during.  
9 Q So what's your best memory?  
10 A I don't recall.  
11 Q You certainly had not committed your opinions to  
12 a final writing at the time that you got this  
13 letter from Mr. Sanderson, correct?  
14 A I think the letter was more confirmation for us  
15 than anything else, for me than anything else.  
16 Q Well actually it reads, in large part it reads  
17 almost verbatim in certain parts that your report  
18 does, correct?  
19 A That's because I sent him a copy of my report.  
20 Q Is that what happened? You sent him a report and  
21 he sends back this letter?  
22 A I wanted to know his opinion.  
23 Q After you send him your report?  
24 A Correct.

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1 plaintiff's counsel and Mr. Sanderson?  
2 A I don't.  
3 Q Do you know if there is one?  
4 A I don't.  
5 Q Do you know if they've worked together in the  
6 past?  
7 A I don't.  
8 Q What did you do after receiving this memo in June  
9 of 2005, Exhibit 9?  
10 A Gave Mr. Sanderson a call.  
11 Q Then you had those two or three conversations you  
12 spoke about?  
13 A Correct.  
14 Q In fact, he wrote a memo to you about how the  
15 accident, well how he thought the accident  
16 occurred, correct?  
17 A Correct.  
18 Q Your report is based in large part on that memo  
19 that Mr. Sanderson sent to you, correct?  
20 MR. BYRNE: Objection.  
21 A He had reached the same conclusion I had at that  
22 time.  
23 Q Well he actually put it -- when did you get this  
24 writing from him?

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1 Q So he's plagiarizing from your report?  
2 A I don't think he's plagiarizing. I think he's  
3 doing a very good job.  
4 Q Why don't you pull his report out of your file,  
5 sir?  
6 A Oh, I have a copy of his report, but it was  
7 supplied here by counsel.  
8 MR. FLYNN: Can we have that marked.  
9 A It's in here but...  
10 MR. BYRNE: This one came from my file.  
11 MR. FLYNN: Can I mark that one, Bob?  
12 MR. BYRNE: Why don't we make a photocopy of  
13 it.  
14 MR. FLYNN: Sure. Thanks, Bob.  
15 Can I have these next two documents marked  
16 as Exhibits 11 and 12. 11 is a report on  
17 Harlan-McGee, dated August 24, 2005 on  
18 Harlan-McGee letterhead. Exhibit 12 is a report,  
19 same date, but it's the one, it's a copy of what  
20 you faxed to me on August 31st of 2005.  
21 ( Mr. Sanderson's Report, marked as  
22 Exhibit No. 10.)  
23 ( Report dated August 24, 2005,  
24 marked as Exhibit No. 11.)

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# Exhibit “E”

Volume I, Pages 1-292

Exhibits 1-8

UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS

-----  
PAUL T. PAPADAKIS,

Plaintiff,

v.

C.A. NO.: 04-30189-MAP

CSX TRANSPORTATION, INC.,

Defendant.  
-----

DEPOSITION OF: RICHARD L. SANDERSON

FLYNN & ASSOCIATES, P.C.

400 Crown Colony Drive, Suite 200

Quincy, Massachusetts

December 5, 2005 10:45 a.m.

REPORTED BY: SONYA LOPES/CSR

**Richard L. Sanderson**  
**December 5, 2005**

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1 for an approximate period of five years?

2 A. As an Amtrak employee. We had the  
3 contractor run them -- it's up on the T -- running  
4 the commuter rail, work equipment, equipment  
5 engineer.

6 Q. Was that up here?

7 A. That was in -- yes. I had all of  
8 Charlestown, yes. And I had control of the shops --  
9 one in Salem, one in Boston.

10 Q. When you retired, what was your position  
11 with Amtrak?

12 A. Lead road mechanic.

13 Q. What have -- what were the duties and  
14 responsibilities of that job?

15 A. As a lead road mechanic?

16 Q. Right.

17 A. Direct other mechanics, get parts, help  
18 with repairs on everything, order parts, position  
19 people, report to the supervisor, help.

20 Q. What types of equipment did you work with?

21 A. Everything that's rail construction from  
22 Hy-Rail units right up to 50-ton cranes.

23 Q. That was not a position which included the  
24 maintenance of locomotives and cars?



**Richard L. Sanderson**  
**December 5, 2005**

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1 A. No. Work equipment only.

2 Q. Work equipment only?

3 A. Correct.

4 Q. For how long had you had that position?

5 A. 41 years I was work equipment road mechanic  
6 with different, you know -- I mean, I from being a  
7 road mechanic went to management, management back to  
8 road mechanic back up to manager back down to  
9 mechanic.

10 Q. Did you -- so I guess what you're telling  
11 me is at the time that you retired a couple of years  
12 ago --

13 A. Yes.

14 Q. -- you had had 41 years of experience on  
15 the railroad.

16 A. That's correct. As work equipment.

17 Q. And it was always in the same craft?

18 A. Always.

19 Q. When you hired out with the New York and  
20 New Haven, that was as a road mechanic?

21 A. That's correct.

22 Q. Somebody who works on all the pieces of  
23 equipment that are used in track maintenance --

24 A. That's correct.

Richard L. Sanderson  
December 5, 2005

10

1 Q. -- and track repair?

2 A. That's correct.

3 Q. Would that include construction crane and  
4 that types of stuff?

5 A. Yes.

6 Q. You work with tampers as well?

7 A. Yes.

8 Q. You're working with a wide variety of  
9 pieces of equipment?

10 A. Yes.

11 Q. Hy-Railers being one of them; correct?

12 A. That's correct.

13 Q. Now, one thing I failed to ask you is have  
14 you reviewed the Notice of Deposition for this --  
15 for your deposition in this case?

16 A. I probably -- yeah. Yeah. I have it. I  
17 had it. I just --

18 Q. Let me mark as Exhibit 1 --

19 A. I'm pretty sure I read it. It's going back  
20 a ways.

21 Q. Well, can't be going back too far.

22 A. No. But, I mean, you know, it's all  
23 relative.

24 MR. FLYNN: Let me have marked for you a

**Richard L. Sanderson**  
**December 5, 2005**

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1           The other thing that we have inside of 2A  
2   is a letter from Mr. Byrne's firm date -- or  
3   Mr. Byrne himself dated April 13, 2005; correct?

4       A.    That's what it says, yes.

5       Q.    And with that letter came some copies of  
6   pages of the Hy-Rail manual; correct?

7       A.    Yeah.

8       Q.    And that was a different manual than the  
9   one you had in your possession; correct?

10           MR. BYRNE:  Objection.

11       A.    That's not a manual.  I have a manual.  
12   That's the difference.  Yeah.

13   BY MR. FLYNN:

14       Q.    What's the difference here?

15       A.    Mine has more pages, more information, more  
16   explanation.

17       Q.    Right.  He sent you certain pages from a  
18   manual that he had; correct?

19       A.    I guess so, yeah.

20       Q.    And the manual that he had was a different  
21   manual than the one you had; correct?

22           MR. BYRNE:  Objection.

23       A.    I'm not sure what he had.

24   BY MR. FLYNN:

**Richard L. Sanderson**  
**December 5, 2005**

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1 Q. Your manual was the '88 manual; correct?

2 A. I have the original manual.

3 Q. You don't know the dates?

4 A. I don't.

5 Q. That wouldn't be important to you?

6 A. No, not at all.

7 Q. You didn't look to see whether these dates  
8 were in the same manual?

9 A. No. It's not important to me.

10 Q. And he references in this letter you are  
11 meeting at the Amtrak New Haven station; correct?

12 A. Yes.

13 Q. All right. Now, did you have any  
14 conversation with him before that meeting?

15 A. I don't remember.

16 Q. All right. Now, how long did the meeting  
17 take place?

18 A. I don't know.

19 Q. What's your best recollection?

20 A. An hour.

21 Q. Where did it take place?

22 A. At the Dunkin' Donuts.

23 Q. Anywhere else? Just at the Dunkin' Donuts?

24 A. Also looked at the Hy-Rail at the Amtrak



**Richard L. Sanderson**  
**December 5, 2005**

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1 A. I said I'm going to look at the Hy-Rail, is  
2 that okay. End of conversation. That was it.

3 Q. There was one there?

4 A. Yes.

5 Q. What type was it?

6 A. It was a Fairmont.

7 Q. What model?

8 A. 0307.

9 Q. Was it an Easy-Lift?

10 A. Yes.

11 Q. Was it the same type involved in this case?

12 A. No.

13 Q. Was it a different type?

14 A. Yes.

15 Q. How was it different?

16 A. More current.

17 Q. Did it operate in the same fashion?

18 MR. BYRNE: Objection.

19 A. Similar.

20 BY MR. FLYNN:

21 Q. Similar. Do you know the type that was  
22 involved in this case?

23 A. Yes.

24 Q. Which type was involved in this case?

Richard L. Sanderson  
December 5, 2005

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1 A. 0307A.

2 Q. This was a different type altogether?

3 MR. BYRNE: Objection.

4 A. A newer one.

5 BY MR. FLYNN:

6 Q. A newer one. Okay. Did it have sockets on  
7 the top and bottom?

8 A. Yes.

9 Q. Did it operate the same way?

10 A. Similar.

11 Q. How was it different?

12 A. It had a newer modification.

13 Q. Which is what?

14 A. Which is a socket that does not allow it to  
15 go over centre.

16 Q. So it was something that high -- that  
17 Fairmont had put out since the 0307 was in -- was  
18 being manufactured?

19 A. I don't know.

20 Q. You say it's newer. When did they come  
21 out?

22 A. I don't know.

23 Q. So with respect to the socket, how does the  
24 socket on the device that you looked at prevent the

**Richard L. Sanderson**  
**December 5, 2005**

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1 wheel from camming over centre?

2 A. It has a -- nubs cast into it.

3 Q. Can you describe that any better for us?  
4 Where are they cast?

5 A. In the socket. They're cast one on either  
6 side, so they're reversible for side to side. And  
7 it's a -- I'm trying to think of -- it's a  
8 protrusion of a three seven inch.

9 Q. Is it about in the same area where the set  
10 screw is on the 0307?

11 A. No, it isn't.

12 Q. How's it different?

13 A. It's on the opposite side. It's on the  
14 socket.

15 Q. And how does it prevent overcamming?

16 A. It hits a mounting bracket.

17 Q. Is that something that's different as well,  
18 or is that the same thing?

19 A. No. It's the same mounting bracket as the  
20 rest of the vehicles. Just the socket is different.

21 Q. All right. Do you understand the way the  
22 0307 that was involved in Mr. Papadakis's case that  
23 the set screw is what hits the -- the set screw on  
24 the socket hits the mounting bracket?

**Richard L. Sanderson**  
**December 5, 2005**

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1 MR. BYRNE: Objection.

2 A. Not aware of any set screw on the socket  
3 that hits the bracket.

4 BY MR. FLYNN:

5 Q. So as far as you understand, in  
6 Mr. Papadakis's case there was no set screw on the  
7 socket.

8 MR. BYRNE: Objection.

9 A. There is no set screw on the socket that  
10 hits the frame.

11 BY MR. FLYNN:

12 Q. Where is the set screw on the 0307, as far  
13 as you understand?

14 A. Okay. Which model? 0307?

15 Q. The one involved in Mr. Papadakis's case.

16 A. It would be on the right side of the socket  
17 shaft.

18 Q. All right. Does it hit the bracket?

19 A. It hits the mounting channel.

20 Q. The mounting channel?

21 A. If it's adjusted properly, it will hit the  
22 channel. That's correct.

23 Q. That gives an indication to the operator  
24 that he's -- that if he goes any further, he can cam

**Richard L. Sanderson**  
**December 5, 2005**

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1 questions and answers; correct?

2 A. Yup.

3 Q. You know that you're giving a deposition  
4 today; right?

5 A. Yes. I do now.

6 Q. The process has been described to you?

7 A. Yes. It has now.

8 Q. And the report, it's completely different;  
9 right?

10 A. Yes, it is.

11 Q. That's just something that Mr. Gailor put  
12 together and signed; correct?

13 A. Yes. I guess so. Yeah.

14 Q. So as we sit here today, you've never  
15 reviewed Mr. Gailor's deposition, have you?

16 A. No.

17 Q. You've only received one version of his  
18 report; correct?

19 A. Yes. That's all I have.

20 Q. And let's have this report -- by the way,  
21 for the record, it has attached to it a letter from  
22 Mr. Byrne dated August 31, 2005; correct?

23 A. Okay.

24 Q. Right?



**Richard L. Sanderson**  
**December 5, 2005**

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1 pawl, comma, disengaging it, end of quote. Did I  
2 read that correctly?

3 A. Yes.

4 Q. You disagree with that?

5 A. Yes.

6 Q. Why?

7 A. Because that's not the way you would  
8 release the locking pawl.

9 Q. That's not the way you would do it  
10 properly; correct?

11 A. That's correct.

12 Q. In other words, if you did it this way, it  
13 would have been improperly done; correct?

14 A. It wouldn't work.

15 Q. Because it was done improperly; correct?

16 A. Yes.

17 Q. Do you have, by the way, Mr. Papadakis's  
18 deposition where he described what happened?

19 A. No, I don't.

20 Q. Then what is the basis -- and you  
21 understand this is a description that Mr. Gailor  
22 gave of what Mr. Papadakis said happened; correct?

23 A. No. I didn't know that.

24 MR. BYRNE: Objection.

Richard L. Sanderson  
December 5, 2005

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1 Q. And putting it down on the track, is he  
2 not?

3 A. Doesn't say that. That statement doesn't  
4 say that. Says disengaging the lock.

5 Q. Actually, what he's describing there is  
6 what he's doing to take the wheel up; correct?

7 A. May I read it again?

8 Q. Yes. Sure. Read the whole paragraph.

9 A. I better. Yes. I read it now.

10 Q. And?

11 A. And the question was again?

12 Q. This was when he was trying to take the  
13 wheel back up -- the guide wheel back up from the  
14 rail position to the highway position; correct?

15 A. Yes. He was trying to get -- go from rail  
16 to highway. That's correct.

17 Q. Can I see that for a second?

18 A. Yes.

19 Q. What else did you disagree with -- by the  
20 way, you have not reviewed Mr. Papadakis's  
21 deposition, have you?

22 A. I don't think so. It's not in the file. I  
23 never saw it.

24 Q. So that's never been produced to you?

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1 A. I've never seen it.

2 Q. You've never read Mr. Gailor's deposition  
3 either; right?

4 A. Apparently not.

5 Q. Have you asked for either one of those  
6 things?

7 A. No. I might have asked for  
8 Mr. Papadakis's.

9 Q. You've never received it?

10 A. No.

11 Q. Do you think it would be important to  
12 somebody -- you've been retained now to give an  
13 expert opinion in this case; correct?

14 MR. BYRNE: Objection.

15 A. What?

16 BY MR. FLYNN:

17 Q. Let me -- have you been retained?

18 A. I'm not sure. May I explain?

19 Q. Go ahead.

20 A. Originally, when I got involved in this  
21 thing, I was just going to give my experienced  
22 opinion originally. And that was going to be it.  
23 And then as it went on, I got more involved in it.  
24 And at that point I said I can no longer donate that

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1 A. Verbally.

2 Q. Over the phone? In person?

3 A. No. When we were in person.

4 Q. What did you say?

5 A. I don't remember word for word what I said.

6 I believe I showed Mr. Byrne -- it had to do with  
7 overcamming. And I believe I showed Mr. Byrne the  
8 operation of a Hy-Rail that's in New Haven. I  
9 showed him how a Hy-Rail actually operates.

10 Q. That was the first time you went down to  
11 Amtrak?

12 A. I believe so.

13 Q. Go ahead.

14 A. And, you know, I showed him the operation  
15 of the vehicle, how a Hy-Rail goes up and down and  
16 work and what it does. And then I expressed what  
17 overcamming is. I showed him what overcamming was  
18 or the term they use as overcamming, and I also  
19 showed him what could happened when it overcammed or  
20 what could not happened when it overcammed.

21 Q. So the device that you used to demonstrate  
22 this, you were able to get the device to overcam?

23 MR. BYRNE: Objection.

24 A. No.

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1 BY MR. FLYNN:

2 Q. You said you showed him what happens when  
3 you overcam and when you don't overcam.

4 A. Visually. Yes. I showed him the units and  
5 what they do. I could not have that happen. I  
6 could not disable a Hy-Rail. I just showed him the  
7 working, functioning parts.

8 Q. And did you ever -- in either of the times  
9 that you met with Mr. Byrne to show him a Hy-Rail,  
10 did you use the same device that was involved in  
11 Mr. Papadakis's case; in other words, the 0307?

12 MR. BYRNE: Objection.

13 A. Yeah. It needs to be more clarified. Yes,  
14 it was an 0307 that I showed Mr. Byrne.

15 BY MR. FLYNN:

16 Q. Was it the newer type?

17 A. It was a newer type.

18 Q. It wasn't the type that was involved in  
19 Mr. Papadakis's accident?

20 A. It was not the same -- it's the same model  
21 but not the same parts.

22 Q. Specifically, the part that was different  
23 as it applies to this case was the stop on the  
24 socket; correct?



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1 A. One of them, yes.

2 Q. As opposed to the set screw; correct?

3 A. That would be one of the changes, yes.

4 That would be one, yeah.

5 Q. All right. And you showed him how that  
6 device was able to overcam; correct?

7 MR. BYRNE: Objection.

8 A. I may not have showed him that.

9 BY MR. FLYNN:

10 Q. What did you show him?

11 A. I showed him the functioning of a Hy-Rail.

12 Q. Now, what was your opinion as you expressed  
13 it to Mr. Byrne at that time?

14 A. I don't remember.

15 Q. What's your best recollection of what you  
16 expressed to him?

17 A. My best recollection would be to say that I  
18 went through the proper operation of a Hy-Rail. And  
19 I showed Mr. Byrne how a Hy-Rail works -- how it  
20 goes up, how it goes down, how it locks, how it  
21 unlocks -- and, also, visually pointed to what would  
22 go -- how you would go overcam and allow the wheel  
23 to malfunction -- malfunction.

24 Q. Did you express to him -- so you expressed

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1       A.    I don't know how the device is designed.  
2   I'm not an engineer.

3   BY MR. FLYNN:

4       Q.    I'll get to that in a little bit, but go  
5   ahead.

6       A.    So that would be one way.

7       Q.    Wait.  So you don't know how the device is  
8   designed because you are not an engineer?

9       A.    Yeah.

10      Q.    That's not something within your expertise;  
11   correct?

12      A.    Engineering?

13      Q.    Right.

14      A.    I have no engineering degree.

15      Q.    You have no opinion in this case as to  
16   whether or not the device was defectively designed;  
17   correct?

18      A.    I wouldn't know that.

19      Q.    You only know based on your experience that  
20   -- given the way the device is designed -- that if  
21   the operator puts too much pressure on the bar when  
22   you're putting it down into the rail position that  
23   that can cause the guide wheel to overcam; correct?

24      A.    That's not what I said.

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1 Q. What did you say?

2 A. What I said was if he has -- I'm not sure  
3 what I said. But if he has the proper bar and  
4 everything is set up, it's pretty much hard to go  
5 over centre. But if he does not have the proper bar  
6 or if he has a different bar -- a lining bar or  
7 something like that -- then it's possible for him to  
8 overcome the second level of protection.

9 Q. That being the set screw?

10 A. That being the set screw.

11 Q. On the old model.

12 A. On the older model.

13 Q. Which is not what you used -- it's not the  
14 model that you used when you showed Mr. Byrne --

15 A. That's correct.

16 Q. -- this in connection with your opinion.

17 A. No, it isn't.

18 Q. So it was based on your experience with  
19 using these other types.

20 A. Yes.

21 Q. All right. So you knew that if you had the  
22 wrong bar, the operator could put too much pressure  
23 on it and then overcome the --

24 A. Secondary level of protection, which would

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1 be the set screw.

2 Q. All right.

3 A. That's one.

4 Q. That's one. With respect -- go ahead. The  
5 other one was if he had the improper bar?

6 A. A would be the improper bar.

7 Q. I think you said that even with the  
8 improper bar -- with the improper bar it's hard to  
9 go over centre but not impossible; correct?

10 A. No. That's not what I said.

11 Q. I wrote it down, improper bar it's hard to  
12 go over centre. I believe those were your words.  
13 If I'm wrong, the record will reflect it.

14 MR. BYRNE: The record will reflect it.

15 A. Well, if you have the improper bar, he  
16 could put it over centre by overcoming the  
17 resistance of the set screw.

18 BY MR. FLYNN:

19 Q. He can still do that even with the improper  
20 bar.

21 A. That's what I'm talking about.

22 Q. What about with the proper bar?

23 A. With the proper bar, it should hit the  
24 bumper before that happened.

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1 Q. The bar itself?

2 A. The bar itself, A.

3 Q. Go ahead.

4 A. B would be if the stop itself was out of  
5 adjustment, the possibility exists that it could go  
6 over. He can also overcam it or -- I'm trying to  
7 think of what else would do that. It could also be  
8 worn, the position of the -- I'm trying to think of  
9 a word for you. We'll call it a lug that the cam  
10 contacts. If that were worn, the possibility exists  
11 that the cam could get by that.

12 Q. Anything else?

13 A. At the moment I can't remember anything  
14 more.

15 Q. Now, did you express all of these opinions  
16 to Mr. Byrne prior to your involvement with  
17 Mr. Gailor?

18 A. I don't remember.

19 Q. So you don't remember exactly what you  
20 expressed to Mr. Byrne, although you now know that  
21 at least these four different alternatives -- these  
22 are four alternative causes to overcamming that you  
23 know of, based on your experience.

24 A. Yes.

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1 Q. You said one of the things that could cause  
2 -- let me back up. Did you express to Mr. Byrne,  
3 when you first expressed your opinion to him, an  
4 opinion as to how Mr. Papadakis's accident occurred?

5 A. No.

6 Q. You only expressed to him an opinion as to  
7 based on your experience how the device might go  
8 over centre; correct?

9 A. Yes.

10 Q. To this day, you have not read  
11 Mr. Papadakis's deposition; correct?

12 A. I have not read it, no.

13 Q. And at the point that you gave the opinion,  
14 had you gotten information from any source as to how  
15 Mr. Papadakis says his accident happened?

16 A. I don't remember.

17 Q. Have you ever spoken with him?

18 A. Yes, I have.

19 Q. When did you speak with him?

20 A. Between, you know -- between April and  
21 August, somewhere in there.

22 Q. Was it prior -- was it prior to your  
23 meeting with Mr. Byrne?

24 A. No.



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1 Q. So this is when he was trying to put the --

2 A. Hy-Rail gear.

3 Q. -- into the highway position?

4 A. That he would push down on the bar to put  
5 it up into that locking position, but it would fall  
6 right back down again.

7 Q. By the way, sir, you've never inspected the  
8 actual device that was involved in Mr. Papadakis's  
9 case, have you?

10 A. No.

11 Q. You've never even seen it; correct?

12 A. No.

13 Q. You've never seen it?

14 A. I've never seen it. That's correct.

15 Q. What else did he tell you -- so then go on.  
16 What else did he tell you?

17 A. And then he said -- let me see. He said he  
18 was at the crossing, he tried to raise the Hy-Rail  
19 unit, it went up to the top and fell back down and  
20 it happened a couple of times. And he was not able  
21 to lock it into the position. And then he said  
22 somehow he had chained the wheel up with a chain,  
23 and that was pretty much it. And that was it.

24 Q. When did he say that he got hurt?

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1       A.     Okay.  Going back to the very beginning, I  
2     never -- we never finished that conversation, if you  
3     can understand what I'm saying.  He told me, you  
4     know, that that happened, he pushed the bar.  And  
5     what I said was I don't see how that could happen.  
6     I don't see how, you know, when he pushed the bar up  
7     that the wheel would fall.  I said the -- and why it  
8     would not lock.

9       Q.     Wait a minute.  Is that still your  
10    professional opinion?  Is it still your professional  
11    opinion that the way he described it to you could  
12    not happen?

13    A.     To raise the wheel, no.  The way the wheel  
14    fell, yes.

15    Q.     So make sure the record is clear.  He says  
16    to you I'm trying to put it back up, I got the bar  
17    in the lower socket, I'm pushing down, the wheel's  
18    coming all the way up and falling back down.

19    A.     That's what he told me, yes.

20    Q.     It's your opinion that that could not  
21    happen; correct?

22               MR. BYRNE:  Objection.  Go ahead.

23    BY MR. FLYNN:

24    Q.     Correct?

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1 A. Yes.

2 Q. And you explained that to him in your  
3 conversation with him even before you -- before you  
4 became involved with Mr. Gailor; correct?

5 A. Yeah. Yes. I'd say so.

6 Q. I think you just told me you said to him I  
7 don't see how that could happen.

8 A. Yeah. Yeah.

9 Q. That's still your opinion; correct?

10 A. Yes. Yes.

11 Q. What was the next part of that  
12 conversation?

13 A. And then I said -- then he took off, said  
14 he had to chain the wheel up to lock it. And I said  
15 well, to me it sounds like it's overcammed.

16 Q. So you told him that?

17 A. That was my suggestion, yes.

18 Q. You said that it sounds like it's  
19 overcammed?

20 A. Yes. I said that.

21 Q. Which was completely different from what he  
22 described to you; correct?

23 MR. BYRNE: Objection.

24 A. No.

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1 Q. And we know that the -- from the only  
2 person who measured it after the accident,  
3 Mr. Ebert. He found that it was within the proper  
4 adjustment; correct?

5 A. He said that.

6 Q. So do you have an opinion, sir, that the  
7 stop arm adjustment had anything to do with causing  
8 Mr. Papadakis's accident?

9 A. I think it did, yes. Yes, I do.

10 Q. What do you say it had to do with?

11 A. I believe it did not supply the second  
12 level of resistance.

13 Q. It never hit the cross channel, according  
14 to what you say.

15 A. I believe it might have went by the cross  
16 channel.

17 Q. So it missed it altogether?

18 A. The gouges were there already, I believe.

19 Q. Hold on. Obviously, if the gouges are  
20 there, that means it's hitting the cross channel;  
21 right?

22 A. At some point.

23 Q. What you're saying is, No. 1, it was out of  
24 adjustment; correct?

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1 A. Contributing cause. That's a good word.

2 Yes.

3 Q. All right. And it's your opinion that what  
4 happened was the stop arm just never hit the cross  
5 channel; correct?

6 A. It never offered the resistance that it  
7 should have.

8 Q. Or the communication to Mr. Papadakis when  
9 he was operating it that he had gone that far;  
10 correct?

11 MR. BYRNE: Objection.

12 A. If he could feel it, yeah.

13 BY MR. FLYNN:

14 Q. Assuming that the adjustment was correct --  
15 taking into account for the gouge -- and assuming  
16 that when Mr. Papadakis operated the device to put  
17 it into the rail position that it did, in fact, hit  
18 -- the stop arm did, in fact, hit the cross channel  
19 and he went further than that to overcam it, his --  
20 the overcamming, then, would have been caused by his  
21 own conduct; correct?

22 MR. BYRNE: Objection.

23 A. Would have been caused by him having the  
24 wrong angled bar.

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1 went beyond that point that the wheel itself -- the  
2 guide wheel itself -- would still have looked as if  
3 it had not been -- the shaft had not been  
4 overcammed; correct?

5 A. Yes.

6 Q. And that you have experience with that.

7 A. Sure.

8 Q. You have seen that before?

9 A. Sure. You can actually replicate that, if  
10 you wanted to.

11 Q. Have you?

12 A. Yes. Ebert's done it.

13 Q. Did you do that?

14 A. No, never in my career. Yes. Not in here.  
15 Ebert did.

16 Q. He did what?

17 A. They overcammed that one on the rack.

18 Q. They did?

19 A. Just like I'm saying. It says it in there.

20 Q. What did he say about how it would appear  
21 to the operator?

22 MR. BYRNE: Objection.

23 A. I'm just talking about the overcamming.

24 BY MR. FLYNN:



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1 that he actually received an injury; correct?

2 A. No.

3 Q. Correct? Right?

4 A. I'm sorry. Correct.

5 Q. So you don't have any opinion as to what  
6 caused his injury; correct?

7 A. No.

8 Q. You agree with what I said?

9 A. I'm sorry. Yes. Yes.

10 Q. Now, have you ever been retained to give an  
11 expert opinion in a case before?

12 A. Never.

13 Q. Have you ever been consulted with respect  
14 to your expertise?

15 A. Well, in a case, you mean?

16 Q. Yes.

17 A. Never.

18 Q. So you've been consulted when you were an  
19 employee; correct?

20 A. Oh, sure, all the time.

21 Q. Never involved in a litigation; correct?

22 A. No.

23 Q. You've never testified in a deposition,  
24 have you?

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1 A. Many, many years ago I might have.

2 Q. When was the last time you testified?

3 A. 25 years ago maybe.

4 Q. And was that as an expert, or was that just  
5 as a witness?

6 A. No. Just as a witness.

7 Q. To a personal injury?

8 A. Yeah.

9 Q. Did it have anything to do with the  
10 operation of a Hy-Rail device?

11 A. No.

12 Q. Do you currently plan to make it a practice  
13 to testify as an expert in cases involving injuries?

14 A. I don't know. I'm not clear. I don't  
15 know.

16 Q. Well, most of the time when we have expert  
17 opinions, they're people that do this -- at least in  
18 part -- for a living. Okay? Do you have any plans  
19 to do this for a living?

20 A. I'm not sure.

21 Q. You're thinking about it?

22 A. I don't know. I'm serious. I don't know.  
23 I have to see how this goes and how I feel.

24 Q. Fair enough. Did you receive any training

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1 may have been something else that may have been  
2 produced as part of Mr. Gailor's disclosure  
3 information.

4 MR. FLYNN: Yes. But it was your memo.

5 MR. BYRNE: If you want to ask him about  
6 it, I think you'll find --

7 MR. FLYNN: Maybe I will.

8 MR. BYRNE: -- it was a statement  
9 regarding his experience.

10 MR. FLYNN: All right.

11 BY MR. FLYNN:

12 Q. Sir, would you describe for us your  
13 educational -- your education?

14 A. Okay. My education. Well, I went to high  
15 school.

16 Q. Where?

17 A. I went to trade school, Eli Whitney Tech.

18 Q. Where did you go to high school?

19 A. Eli Whitney Tech.

20 Q. That's a high school?

21 A. Yes. It's a trade school. Both.

22 Q. When did you graduate?

23 A. I graduated in -- oh, boy. That's '60, I'm  
24 guessing. And then I went back. I was too young at

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1 the time to get a job. I had to go back. So I  
2 postgraduated (sic) -- postgraduate, one more year.  
3 So I was full trade.

4 Q. At the high school?

5 A. That's right. At the same school. Then  
6 from there --

7 Q. What was the field of study as a  
8 postgraduate?

9 A. Automotive mechanics for the four years.  
10 Then from there I went to work on the railroad. And  
11 then while working at the railroad, I went to many  
12 trade -- many OEM machine-type schools. I went to  
13 welding schools, electrical schools -- machine  
14 schools, for lack of a better word. Then I went to  
15 college for 50 -- I think I had 58 credits.

16 Q. Where did you go to college?

17 A. Several places. I went to Middlesex  
18 Community in Connecticut, and I went to Middlesex  
19 Community in Massachusetts. Then I took some  
20 courses in Salem, and that's it.

21 Q. And did you receive any degree?

22 A. No. No, I have not.

23 Q. It's classes here and there?

24 A. Well, it's a part of a degree. I stopped

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1 going because I retired.

2 Q. I see someplace that there was some  
3 studying you've done with respect to business  
4 management.

5 A. Yes. That was it. That was my degree --  
6 program.

7 Q. So during the course of your railroad  
8 experience, you'd from time to time take some  
9 courses in furtherance of a business management  
10 degree.

11 A. Yes.

12 Q. But you never --

13 A. Finished.

14 Q. You never finished, and you're not pursuing  
15 that now.

16 A. No. No need to.

17 Q. And the -- have you ever received any OEM  
18 training in the railroad with respect to Hy-Rail  
19 devices?

20 A. Other than the -- what I spoke about  
21 earlier.

22 Q. Which was the representative from Fairmont?

23 A. Yes. And -- yes. And that occurs every  
24 eight, ten years that that happens. And when you

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1 Q. So you went into the bed of the truck.

2 A. It was just there, yeah.

3 Q. And you took it out of the bed?

4 A. Yeah.

5 Q. And then operated it?

6 A. Yes, I did.

7 Q. And did you take any pictures?

8 A. I didn't, no.

9 Q. Did you make any notes?

10 A. No.

11 Q. Did Mr. Byrne take any pictures?

12 A. I don't think so.

13 Q. Did Mr. Byrne take any notes?

14 A. I don't remember.

15 Q. Did you write up a report of that first  
16 inspection?

17 A. No.

18 Q. What did you do during that inspection?

19 A. Just to show him what a Hy-Rail was.

20 Q. Did the Hy-Rail -- was it the same type of  
21 Hy-Railer involved in Mr. Papadakis's accident or  
22 case?

23 MR. BYRNE: Objection. Asked and  
24 answered.



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1 A. It was the same model.

2 BY MR. FLYNN:

3 Q. It was an 0307?

4 A. Yes. But a newer model.

5 Q. So it was the one with the --

6 A. Yes.

7 Q. -- with the new --

8 A. Yes. Yes.

9 Q. -- stop arm; correct?

10 MR. BYRNE: Wait for him to complete the  
11 question, please.

12 BY MR. FLYNN:

13 Q. Right?

14 A. Yes.

15 Q. Then you had a second meeting with  
16 Mr. Byrne. When did that take place?

17 A. After that. I don't remember. At least 30  
18 days, I'm assuming.

19 Q. Where did this second meeting take place?

20 A. New Haven.

21 Q. Same place?

22 A. No.

23 Q. Where?

24 A. The Dunkin' Donuts.